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Remarks

Claims 1-8 were pending in the application.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 112, ¶1, as based on a disclosure which is non-enabling.

Claims 1, 7, and 8 are rejected under 35 U.S.C. 103 as being unpatentable over U.S. Patent No. 5,760,934 issued to Sutter et al. on June 2, 1998 (hereinafter "Sutter") in view of Falkenstein et al. U.S. Publication No. 2002/0080445 (hereinafter "Falkenstein").

Claims 2-6 are allowed.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously

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depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 37 U.S.C. 112, ¶1

Claims 1, 7 and 8 are rejected under 35 U.S.C. 112, ¶1, as based on a disclosure which is non-enabling.

This ground of rejection is respectfully traversed.

The first and second switches are enabled by the disclosure of the present application. The specification on pages 8-17, as well as figures 1-5, discloses the network and components as claimed including the feature of when the first carrier is not capable of transmitting first information over the fiber, the first information is modulated on the second carrier for transmission over the fiber is enabled. Thus, a closed loop optical fiber having a node that has the above feature is disclosed and enabled. Moreover, claim 1 uses the term "comprising" and is open ended. Claim 1 does not require the above feature to be performed without the first and second switches. It is improper to read that non-existent limitation into claim 1.

Rejection Under 35 U.S.C. 103(a)

Claims 1, 7, and 8 are rejected under 35 U.S.C. 103 as being unpatentable over U.S. Patent No. 5,760,934 issued to Sutter et al. on June 2, 1998 (hereinafter "Sutter") in view of Falkenstein et al. U.S. Publication No. 2002/0080445 (hereinafter "Falkenstein").

This ground of rejection is respectfully traversed.

Applicants' independent claim 1 requires that when a first carrier is not capable of transmitting first information over a fiber, the first information is modulated on a second carrier for transmission over the fiber. The Office Action does not find that teaching in Sutter.

Falkenstein is not proper prior art. The present application is the national stage entry of PCT/US99/15897, which claims benefit to provisional application 60/126,118 filed March 25, 1999. This date is before the filing date of July 20, 2001 of Falkenstein.

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Since Sutter et al. by itself does not teach or suggest the limitation of when a first carrier is not capable of transmitting first information over a fiber, the first information is modulated on a second carrier for transmission over the fiber as called for in applicants' independent claim 1, the rejection is improper. Thus, claim 1 is allowable over the proposed combination of Sutter et al. in view of Falkenstein under 35 U.S.C. 103. Because claims 7 and 8 are dependent claims including all the limitations of claim 1, they are also allowable over the proposed combination of Sutter et al. in view of Falkenstein under 35 U.S.C. 103.

Therefore, Applicants' claims are allowable over Sutter et al. and Falkenstein under 35 U.S.C. 103(a).

New Claims

New claim 23 has been added to better define applicants' invention. Claim 23 is a method claim that parallels the apparatus claim 1. No new matter has been added.

Allowed Claims

Applicants thank the Examiner for the allowance of claims 2-6.

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.


If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicants' attorney so that arrangements may be made to discuss and resolve any such issues.

Respectfully,

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8/17/06

By


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